

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION**

ANTSHAWN DAVIS, #158838

PETITIONER

VERSUS

CIVIL ACTION NO. 4:10-cv-207-DPJ-FKB

WARDEN WALTER TRIPPLET¹, et al.

RESPONDENTS

ORDER

This matter is before the Court, *sua sponte*, for consideration of dismissal. Petitioner Antshawn Davis, an inmate at the Walnut Grove Correctional Facility, Walnut Grove, Mississippi, filed this petition for habeas corpus relief pursuant to 28 U.S.C. § 2254.

I. Background

Petitioner states that he pled guilty to murder on May 24, 2010, in the Circuit Court of Lauderdale County, Meridian, Mississippi. Pet. [1] at 1. He received a life sentence. *Id.* Petitioner argues as grounds for habeas relief the following:

- Ground 1 - Improper indictment;
- Ground 2 - Ineffective assistance of counsel;
- Ground 3 - Facts not previously heard;
- Ground 4 - Involuntary guilty plea.

Resp. [7]. Additionally, in his response [7], Petitioner states that he has "never filed any other motions for relief of [his] charge other than habeas."

II. Analysis

After reviewing Petitioner's application for habeas corpus relief and responses [5 & 7] and applying a liberal construction as required by *Haines v. Kerner*, 404 U.S. 519 (1972), the Court has come to the following conclusions.

¹Petitioner states in his response [7] filed February 11, 2011, that his custodian is Warden Walter Tripplet.

Pursuant to 28 U.S.C. § 2254(b)(1), "a defendant must exhaust all claims in state court prior to requesting federal collateral relief." *Smith v. Quartermar*, 515 F.3d 392, 400 (5th Cir. 2008)(citing *Beazley v. Johnson*, 242 F.3d 248, 263 (5th Cir. 2001)). In order to meet the exhaustion requirement of 28 U.S.C. § 2254(b)(1), the habeas claim must have been fairly presented to the highest state court. *Morris v. Dretke*, 379 F.3d 199, 204 (5th Cir. 2004)(citing *Mercadel v. Cain*, 179 F.3d 271, 275 (5th Cir. 1999)).² As a general matter, a habeas petition is dismissed when the petitioner has not exhausted his claims in state court. See *Smith*, 515 F.3d at 400 (citing 28 U.S.C. § 2254(b)(1)(A); *Rose v. Lundy*, 455 U.S. 509, 519-20 (1982)).

In order for this Court to determine if Petitioner has exhausted the state remedies available to him, an order [6] was entered on January 31, 2011, directing him to provide said information. On February 11, 2011, Petitioner filed his response [7] which stated that he has not filed any motions concerning his conviction in the state courts.

Under Mississippi law, Petitioner does not have a right to a direct appeal to the Mississippi Supreme Court since he pled guilty. Miss. Code Ann. § 99-35-101 (1972). Petitioner does, however, have an available state remedy under the Mississippi Post-Conviction Collateral Relief Act, Mississippi Code Annotated §§ 99-39-1 to -29 (1972). Petitioner has three years after the entry of judgment of the conviction to file a motion under this statute. Miss. Code Ann. §§ 99-39-5 (2) (1972), as amended. Petitioner states that he was convicted on May 24, 2010, and is clearly within the time period to file such a motion. Because Petitioner has not exhausted his available state court

²The petitioner is not excused from exhausting available state court remedies merely because he is *pro se* or ignorant of the law. See *Fisher v. Johnson*, 174 F.3d 710, 714 n. 13 (5th Cir. 1999)(citing *Sahir v. Collins*, 956 F.2d 115, 118-19 (5th Cir. 1992)(providing that pro se status and ignorance of the law does not constitute "cause" for failing to present a legal claim in a petition previously filed)); *Hannah v. Conley*, 49 F.3d 1193, 1196-97 (6th Cir. 1995)(citing *Ewing v. McMackin*, 799 F.2d 1143, 1151 (6th Cir. 1986)(determining that status as a pro se litigant does not excuse the failure to raise issues in state court)).

remedies through the Mississippi Post-Conviction Collateral Relief Act, this Court finds that Petitioner has not met the exhaustion requirement of 28 U.S.C. § 2254(b)(1)(A) and (c). As such, Petitioner's request for habeas relief will be denied for failure to exhaust his state court remedies which are available to him.

III. Conclusion

Petitioner's request for habeas relief is dismissed without prejudice based on his failure to exhaust his state court remedies.

A Final Judgment in accordance with this Order will be issued this date.

SO ORDERED AND ADJUDGED this the 23rd day of March, 2011.

s/ Daniel P. Jordan III
UNITED STATES DISTRICT JUDGE